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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL BRYAN THOMAS,

Defendant and Appellant.

A147649

(San Mateo County  
Super. Ct. No. SC082538A)

Pursuant to a plea agreement, Daniel Thomas pleaded no contest to second degree murder (Pen. Code, § 187, subd. (a))<sup>1</sup> and personal infliction of great bodily injury within the meaning of section 1203.075, subdivision (a)(1). He was advised at the time of his plea that he would be ineligible for probation and receive a required prison term of 15 years to life. Thomas was sentenced consistent with the terms of the agreed disposition. He appeals.

Assigned counsel has submitted a *Wende*<sup>2</sup> brief, certifying that counsel was unable to identify any issues for appellate review. Counsel also submitted a declaration confirming that Thomas was advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.) We find no arguable issues and therefore affirm.

<sup>1</sup> Undesignated statutory references are to the Penal Code.

<sup>2</sup> *People v. Wende* (1979) 25 Cal.3d 436.

## **I. BACKGROUND AND PROCEDURAL HISTORY<sup>3</sup>**

In the early morning hours of April 30, 2014, Thomas asked to use a neighbor's telephone, saying Ruby Bing Gim had fallen out of bed and required medical attention. Sixty-five-year old Gim was a five-foot tall female, weighing 88 pounds. She was unresponsive when medical personnel and police officers arrived on scene. She had bruising on her face, behind her ears, and to the back of her head; she had a broken nose, injuries to her arms and legs, her eyes were swollen shut, and defensive wounds were found on her forearms. A subsequent autopsy revealed she suffered broken ribs on each side of her body, had damage to her larynx, and various trauma to her head. Gim's death was caused by blunt force trauma.

Thomas apparently consumed alcohol the day and night prior to the present offense, and he was observed on a store security camera purchasing a half-pint of vodka at a local store. Sometime during the day of April 29, 2014, he became enraged and physically assaulted Gim. Thomas used a digital camera, with a date and time stamp, to photograph Gim as he attempted to humiliate and degrade her while he physically abused her. The photographs were taken between 6:57 p.m. and 7:26 p.m. During a subsequent interview at the Daly City Police Department, Thomas gave several inconsistent explanations and stories, including that Gim somehow was responsible for her own death. However, Thomas also made statements suggesting he killed her with his hands ("I probably did it"; "I take full responsibility"; "it would have been with my hands"). In a probation interview, Thomas claimed he was unable to recollect the events leading up to Gim's death. He said he had passed out after drinking vodka and woke to find the victim on the floor and not breathing. Thomas had a history of domestic violence against Gim, and he was on supervised probation for a previous assault on her at the time of this offense.

Thomas was charged by information with murder (§ 187, subd. (a)), and it was alleged that in the commission of that offense he personally inflicted great bodily injury

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<sup>3</sup> Facts relating to the underlying offense are taken from the probation report.

within the meaning section 1203.075, subdivision (a)(1). It also was alleged that the offense was a serious and violent felony within the meaning of sections 667.5, subdivision (c) and 1192.7, subdivision (c). The information further charged Thomas with misdemeanor willful violation of a court order (§ 166, subd. (c)(1)).<sup>4</sup>

On October 26, 1015, Thomas entered a negotiated plea of no contest to murder (§ 187, subd. (a)), stipulated at second degree, and admitted the section 1203.075 allegation, with a 15 years to life prison term. The other charge and allegations were dismissed or stricken pursuant to the agreement. On January 13, 2016, the court denied probation and sentenced Thomas to state prison for the statutory term of 15 years to life. Thomas received 624 days of custody credits. The court imposed a restitution fine in the amount of \$1,000, and a \$1,000 parole revocation fine, suspended pending successful completion of parole. Thomas filed a timely notice of appeal.

## **II. DISCUSSION**

Thomas did not obtain a certificate of probable cause (§ 1237.5; Cal. Rules of Court, rule 8.304(b)), and so no cognizable issues are before us relating to his guilt or to his plea.<sup>5</sup> (*People v. Mendez* (1999) 19 Cal.4th 1084, 1097, 1099; *People v. Panizzon* (1996) 13 Cal.4th 68, 74.)

To the extent Thomas seeks to challenge his sentence, his failure to obtain a certificate of probable cause in these circumstances is equally fatal to his appeal. “ ‘[A] challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself’ and thus requires a certificate of probable cause.” (*People v. Shelton* (2006) 37 Cal.4th 759, 766, quoting *People v. Panizzon*, *supra*, 13 Cal.4th at p. 79.) Moreover, Thomas’s admission to the special allegation of

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<sup>4</sup> A protective order issued pursuant to section 136.2 was in effect for Gim at the time of her death.

<sup>5</sup> The record, in any event, reflects that Thomas was represented by counsel at the time of his plea, he executed a written waiver of rights, and he orally waived those rights before the court. The court found Thomas’s waivers to be knowing and voluntary.

personal infliction of great bodily injury precluded a grant of probation, and he was so advised at the time of his plea. He received the statutorily required sentence.

We find no arguable issues.

### **III. DISPOSITION**

The judgment is affirmed.

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BRUINIERS, J.

WE CONCUR:

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JONES, P. J.

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NEEDHAM, J.